



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1161 OF 2024

- 1) Shaikh Feroz Lala Shaikh Chinumiya Tamboli
Age-57 years, Occu:Business,
R/o-Gitanjali Colony, Anurangabad Road,
Jalna, Tq. and Dist-Jalna,
- 2) Abdul Rashid Abdul Quadar,
(corrected name as
Abdul Rashid Abdul Aziz),
Age-63 years,
R/o-Rehman Ganj, Jalna,
Tq. and Dist-Jalna.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Badnapur Police Station,
Tq-Badnapur, Dist-Jalna,
- 2) Pradnya Pramod Surse,
Age-43 years, Occu:Service as
Assistant Commissioner in the
office of Food and Safety Department,
R/o-Plot No.P-8, Hotel Vikas Lodge,
Extend MIDC Area, Aurangabad Road,
Jalna, Tq. and Dist-Jalna.

...RESPONDENTS

...
Mr. D.R. Kale Advocate h/f. Mr. Yogesh H. Lagad Advocate
for Petitioners.
Mr. A.R. Kale, A.P.P. for Respondent No.1.

...

CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.

DATE : 3rd MARCH, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed for quashing the proceedings in R.C.C. No. 47 of 2021 pending before the learned Sessions Court, Jalna arising out of the First Information Report (for short "the FIR") vide Crime No. 176 of 2016 registered with Badnapur Police Station, District-Jalna on 29th July 2016 for the offence punishable under Sections 328, 188, 272, 273, 420, 120-B, 467, 468, 471 read with Section 34 of the Indian Penal Code, Section 59(2) of the Food Safety and Standards Act and Sections 51, 63, 64 of the Copy Right Act.

2. Heard learned Advocate Mr. D.R. Kale holding for learned Advocate Mr. Lagad for petitioners and learned APP Mr. A.R. Kale for respondent No.1.

3. Learned Advocate for the petitioners rely on the decision in ***Ram Nath vs. State of Uttar Pradesh and others, (2024) 3 SCC 502***, wherein it has been held that there are very exhaustive substantive and procedural provisions in Food Safety and

Standards Act for dealing with offences concerning unsafe food. Learned Advocate further submits that Section 89 of the Food Safety and Standards Act gives overriding effect of the Act over all other food related laws and therefore, offence under Section 272 and 273 of the Indian Penal Code will not lie. It is then further stated that in view of the Food Safety and Standards Act, the FIR will not lie but there has to be a complaint of the concerned officer directly to be presented before the concerned Magistrate. Further it is submitted that the present petitioners had no concern with either the food article that was seized or with the property in which the said food article was stated to have been manufactured. The involvement of the present petitioners, as per the entire contents of the chare-sheet, is on the basis of statement of three witnesses, namely, Ganesh Janardhan Bachate, Eknath Janardhan Jagtap and Bhagwan Ganpatrao Mane. Witness Ganesh Bachate has stated that even after the closure of petrol pump, its owner Munnasheth (Manoj) used to come to the petrol pump on alternate days, used to sit there for about five to six hours and there he used to chitchat with some persons wherein names of present petitioners have been taken as well as of one Hakim Choudhari, Mujju as well as one Ketan Shah who had the Gutkha manufacturing company at

Dawalwadi and then it is said that witness Ganesh was under impression that all those persons were manufacturing Gutkha pouches and even he could smell Gutkha when he used to talk to Munnasheth. Almost similar statement has been made by Eknath Jagtap and Bhagwan Mane. They have not stated that they had seen the present petitioners actually taking part in manufacturing unit. Therefore, with this kind of evidence, the petitioners need not be asked to face the trial. Learned Advocate for the petitioners further relies on the decision in ***Suman Mishra and others vs. the State of Uttar Pradesh and another*** (Criminal Application No.--- of 2025 [Arising out of SLP (Cri.) No.9218 of 2024]), decided by the Hon'ble Supreme Court on 12th February 2025, wherein reliance was placed on ***Iqbal alias Bala and others vs. State of Uttar Pradesh and others, (2023) 8 SCC 734***, wherein it has been observed that:-

"9. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Crpc) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.

10. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

11. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged. ”

4. Learned APP strongly opposes the petition and submits that though for the Food Safety and Standards Act the

complaint of the concerned officer would be necessary but here the other offences are also involved under the provisions of the Indian Penal Code as well as the Copy Right Act. Now the charge-sheet is filed and therefore, let there be trial.

5. The first and foremost fact to be noted is that the food inspector appears to have lodged the FIR, who received some secret information. Though the offences under the sections of Indian Penal Code might be attracted and may be maintainable, yet where there is material as against the present petitioners, is a question. As regards the copy right is concerned, when it is stated that the article itself was banned or prohibited for manufacturing, there is no question of copy right in the same. Further, in respect of the Food Safety and Standards Act, the decision in *Ram Nath vs. State of Uttar Pradesh and others* (supra) is applicable and Section 89 of the Food Safety and Standards Act has overriding effect and therefore, in respect of Section 272 and 273 of the Indian Penal Code, the present FIR as well as charge-sheet is not maintainable. Only on the basis of aforesaid three witnesses the prosecution is intending to connect the present petitioners with the crime. Neither the present petitioners are owners nor had taken the property on rent nor

actually involved in manufacturing of the banned article Gutkha. They might be chitchatting with the main accused in the area of petrol pump. But that is not sufficient to array them. These three witnesses have given almost similar statements. They say that whenever the co-accused and petitioners used to chitchat by placing chairs in front of cabin in the petrol pump area, at that time accused Munnasheth used to ask these three witnesses to go away. If they used to go away, how they came to know about the conversation between those persons, is a question. It appears that whatever these witnesses were saying, were only hearsay facts, on the basis of which it cannot be said that there is prima facie case against the present petitioners. It would be unjust to ask the petitioners to face the trial and therefore, the Petition deserves to be allowed. Hence we pass following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The Charge-sheet No.27 of 2021 and the further proceedings in R.C.C. No.47 of 2021 pending before the learned Sessions Court, Jalna, arising out of the First Information Report

vide Crime No.176 of 2016 registered with Badnapur Police Station, District-Jalna on 29th July 2016, for the offence punishable under Sections 328, 188, 272, 273, 420, 120-B, 467, 468, 471 read with Section 34 of the Indian Penal Code, Section 59(2) of the Food Safety and Standards Act and Sections 51, 63, 64 of the Copy Right Act, stands quashed and set aside as against petitioner No.1 - Shaikh Feroz Lala Shaikh Chinumiya Tamboli and petitioner No.2 - Abdul Rashid Abdul Quadar, (corrected name as Abdul Rashid Abdul Aziz).

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR25